

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

BRIAN MAHONEY

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11-CR-06-01-JL  
June 1, 2012  
2:55 p.m.

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE JOSEPH N. LAPLANTE

APPEARANCES:

For the Government:

Arnold H. Huftalen, AUSA  
U.S. Attorney's Office

For the Defendant:

Paul J. Garrity, Esq.  
Garrity Law Office

Andrew R. Schulman, Esq.  
Getman, Schulthess & Steere, P.A.

Court Reporter:

Susan M. Bateman, LCR, RPR, CRR  
Official Court Reporter  
United States District Court  
55 Pleasant Street  
Concord, NH 03301  
(603) 225-1453

1 P R O C E E D I N G S

2 THE CLERK: The Court has before it for  
3 consideration this afternoon a motion hearing in  
4 criminal case 11-CR-06-01-JL, United States of America  
5 versus Brian Mahoney.

6 THE COURT: All right. There are a number of  
7 motions pending and a pretrial conference scheduled  
8 for today.

9 I heard some elevated voices when I was back  
10 in the conference room outside the courtroom. Is  
11 there anything anybody needs to tell me about what was  
12 going on out here?

13 MR. MAHONEY: I do, your Honor. I do. On  
14 the document that -- the motion that the government  
15 has put into evidence on discovery 122 clearly says  
16 that September 23, 1983, I was convicted of rape, sir.

17 I would ask if you could just let the Judge  
18 take a look at this.

19 THE COURT: Stop, stop. That's not what I  
20 was asking.

21 Step one. If counsel does not want to sit at  
22 counsel table with the defendant in this condition, I  
23 don't have a problem if you want to sit at the counsel  
24 table behind him.

25 MR. MAHONEY: You haven't even ruled on any

1 issue of competency or my status of counsel. You  
2 haven't even ruled on it yet, Judge.

3 THE COURT: No, I haven't.

4 MR. MAHONEY: That's right. So how can you  
5 say I cannot be heard in court?

6 THE COURT: Here's how I can say it. I've  
7 been trying to be patient with you, all right? I can  
8 say any time I want who gets to speak in court and  
9 how --

10 MR. MAHONEY: Yes, your Honor, you can.

11 THE COURT: And right now I'm telling you to  
12 stop talking while I try to work something out.

13 Step one is this. You're so animated, all  
14 right, and the security personnel are so concerned  
15 about the safety of the people in the court right now,  
16 because of how you're behaving, that I want to ask  
17 your counsel, who are still your counsel, if they  
18 would prefer to sit at the counsel table behind you  
19 during the hearing so you can't reach them.

20 MR. MAHONEY: Your Honor, I've never once --

21 THE COURT: I'm not asking you. I'm asking  
22 them.

23 MR. MAHONEY: Okay. Ask them.

24 THE COURT: That's all. If they want to stay  
25 there, they can. If they want to sit behind, they

1 can. It's up to you, counsel.

2 MR. GARRITY: I'm fine, Judge.

3 THE COURT: You're fine?

4 MR. SCHULMAN: I'm fine and comfortable with  
5 Mr. --

6 MR. MAHONEY: And I've never used my hands,  
7 your Honor -- and I just wanted to put that on the  
8 record that I've never used my hands before with  
9 attorneys; nor would I ever.

10 THE COURT: All right. Now -- okay. My  
11 initial plan for today was to simply rule on  
12 competency and then, if necessary, proceed to a final  
13 pretrial before the trial.

14 However, I received a motion, which is  
15 document number 92. Hold on a minute. I'm sorry.  
16 Document number -- yeah, document number 92, and a  
17 motion to allow late entry of that, which was number  
18 91. It's a motion to dismiss regarding the issue of  
19 "the lack of a valid rule making SORNA applicable to  
20 pre-act defendants". That's document number 92.

21 That's actually the same issue that you  
22 filed, Mr. Mahoney, pro se.

23 MR. MAHONEY: I also did file, your Honor,  
24 under United States versus Miller in the Sixth  
25 Circuit, and the Sixth Circuit made clear --

1 THE COURT: On the venue issue.

2 MR. MAHONEY: -- on the venue issue that I  
3 was never physically in Massachusetts more than three  
4 days even.

5 THE COURT: Listen, that's not what I'm  
6 talking about. The way you're behaving now --

7 MR. MAHONEY: Yes.

8 THE COURT: -- is why I'm convinced that  
9 while you may very well be competent to stand trial  
10 you are not competent to proceed pro se. You are  
11 totally going sideways. While I'm trying to talk  
12 about one issue, you're going on to a different issue.  
13 That's not how it works in court.

14 MR. MAHONEY: I understand.

15 THE COURT: We can only talk about one issue  
16 at a time. I'm talking about SORNA. You're talking  
17 about venue. First, we're going to talk about SORNA.

18 MR. MAHONEY: Yes, sir. My apologies to the  
19 courts.

20 THE COURT: Now, look, you had already raised  
21 this issue with me in document number 87 in a  
22 handwritten pro se motion. The problem is, I read it  
23 and I couldn't understand a word you were saying.

24 However, Attorney Schulman has filed the same  
25 issue -- it looks like he's covering the same issue in

1 a very thoughtful, well-presented legal argument which  
2 may very well require me to dismiss this case against  
3 you. It may need to be dismissed because of the issue  
4 that you tried to raise in document number 87. You  
5 did raise the issue.

6 MR. MAHONEY: I raised the issue. But I also  
7 cited case law, Judge, which is very, very crucial.  
8 Because you've got to cite the case law under Trent --  
9 United States versus Trent. I know what I filed.  
10 When you read that, it can tell you -- common sense  
11 will say, hey --

12 THE COURT: See, I get lots of motions every  
13 day.

14 MR. MAHONEY: I do understand that.

15 THE COURT: And I need people to frame an  
16 argument for me so I understand what they're talking  
17 about.

18 MR. MAHONEY: I even cited case law which  
19 should be just as good.

20 THE COURT: Well, actually, it's not. That's  
21 the problem. That's something that if you were  
22 competent to represent yourself you would understand.

23 MR. MAHONEY: Well, I thought we were raising  
24 the issue right now with the motion to dismiss based  
25 on the administrative procedure act.

1           THE COURT: Well, it's a very important  
2 issue.

3           MR. MAHONEY: Yes, it is.

4           THE COURT: And the problem is this. It's an  
5 interesting issue and it might require the dismissal  
6 of your case, which would be the dropping of these  
7 charges.

8           The problem is the U.S. Attorney's objection  
9 to that motion is not due until June 11th, which is  
10 right in the middle of your trial.

11          MR. MAHONEY: I was under the impression,  
12 your Honor, that under the rules of federal -- under  
13 the criminal rules of federal procedure that he only  
14 has ten days to file an objection. That was filed on  
15 May 24th.

16          THE COURT: Well, he's got 14 days, number  
17 one. Number two, I didn't even allow --

18          MR. MAHONEY: Okay. I make mistakes.

19          THE COURT: It's not a mistake. It's a  
20 misunderstanding.

21          MR. MAHONEY: I make mistakes.

22          THE COURT: I didn't allow late entry of that  
23 motion till yesterday, because what I thought Attorney  
24 Schulman was moving for late entry for was your  
25 handwritten motion on the same issue, and I understood

1 his motion for late entry and I didn't understand your  
2 handwritten motion enough to think it was worth even  
3 considering, frankly, except like at a pretrial  
4 hearing.

5 MR. MAHONEY: Well, I just take issue under  
6 the administrative procedure act law that it has to be  
7 that. I mean, I was indicted on January 18, 2011, but  
8 the law became finalized on January 28, 2011. But of  
9 course it was filed on December 29, 2010, Judge.

10 THE COURT: Well, you've made note of the  
11 issue, as we say. What Attorney Schulman has done,  
12 though, is explained why it's a problem in a very  
13 detailed and thoughtful way. And Mr. Huftalen  
14 needs to -- he needs to file an objection to that  
15 because if he doesn't file an objection to it the case  
16 will be dismissed.

17 MR. MAHONEY: I understand that point. But  
18 again, I filed it on April 30th, and of course we  
19 didn't have status of counsel so mine should stand  
20 since I've even cited case law.

21 It did say specifically: On December 29,  
22 2010, the Attorney General, Eric Holder -- who was up  
23 in New Hampshire not too long ago. We can actually  
24 subpoena him in and I will subpoena him in to find out  
25 what he did mean under that law, and that's a factual.



1 I mean, we want to find out why he kept changing this.  
2 But when I raised the issue and gave you the citing  
3 case law, he only had ten days -- had 30 days.

4 THE COURT: I want to make a note for the  
5 record, because I'm going to have to rule on -- I may  
6 have to rule on this eventually. Statements like  
7 you're going to subpoena the Attorney General of the  
8 United States into court --

9 MR. MAHONEY: I have that right. I can  
10 subpoena anybody that's exculpatory. And believe me,  
11 Judge, I know the Federal Rules of Criminal Procedure.  
12 Anything exculpatory. We'll ask Eric Holder what he  
13 said and what he meant on that.

14 THE COURT: I am telling you that you have a  
15 misunderstanding of the law on that issue, and that is  
16 yet another reason why if I have to get to that point  
17 I will be ruling that you are not competent to  
18 represent yourself and may not proceed pro se.

19 MR. MAHONEY: But I also did file in the  
20 First Circuit Court of Appeals -- and I believe it's  
21 United States versus Proctor -- that you have to give  
22 me a thorough, thorough conolopy (sic) on why I can't  
23 represent myself.

24 THE COURT: Colloquy.

25 MR. MAHONEY: Conolopy. Excuse me. On why I

1 cannot represent myself.

2 THE COURT: Hold on. It's not a conolopy.  
3 It's a colloquy.

4 MR. MAHONEY: A colloquy. Excuse me.

5 THE COURT: Well, it's important. You're in  
6 court. You want to represent yourself.

7 MR. MAHONEY: Well, I'm deaf in one ear, and  
8 I can never hear the words right anyway.

9 THE COURT: Okay. So here's my question for  
10 you.

11 MR. MAHONEY: Yes.

12 THE COURT: I want to know if you support  
13 this idea. I want to consider this motion to dismiss  
14 your case. There's authority out there that says it  
15 should be dismissed and also authority that says it  
16 shouldn't and --

17 MR. MAHONEY: Well, there's good grounds.

18 THE COURT: -- the First Circuit, the court  
19 that I'm bound by, has not ruled on this issue yet.  
20 So in our circuit there's not a lot of developed  
21 precedent, but there is precedent from other parts of  
22 the country and I need to consider that precedent. I  
23 would like to get the U.S. Attorney's objection to  
24 that.

25 I would like to consider whether I should

1 dismiss your case before the trial is held, not during  
2 or after, okay? So what I would like to know -- and I  
3 think Mr. Schulman could make a good argument under  
4 this law. He's filed a good brief. He could make a  
5 good argument on your behalf. I would like to give  
6 him the opportunity to do that.

7 My question for you is this. I know you  
8 don't want him to represent you at trial.

9 MR. MAHONEY: It's not that, Judge.

10 THE COURT: Here's my question. Here's my  
11 question. Would you permit -- would you allow me not  
12 to rule on their motions to withdraw and your motion  
13 to fire them long enough just so we can litigate this  
14 motion?

15 MR. MAHONEY: I would permit that, Judge. I  
16 would permit them to do that just so that it doesn't  
17 change anything on the status of counsel because of  
18 the fact that, you know, I knew where I was. I knew  
19 where I lived. I knew what happened.

20 I mean, again, Judge, this is a case that in  
21 all the circuits -- and you can even quote me on this  
22 because we have a computer over there now in  
23 Cheshire -- I'm the only one in the country that has  
24 had to register to a 31 year old charge. That is a  
25 disgrace in itself. When you look at that -- when you

1 look at Bruce Selya's decision where he says in United  
2 States versus Stevens, that when you have a case that  
3 far back you have to trace the law's subsequent  
4 history. The law's subsequent history says this: If  
5 your probation, your incarceration and your parole  
6 were completed before October 31, 1994, you don't have  
7 to register unless the sentencing judge said you did.

8 Neither was done. The case is over. This is  
9 not even a case against me, Judge, because I --

10 THE COURT: Slow down because the reporter is  
11 having a little trouble keeping up with you.

12 MR. MAHONEY: I'm sorry. I don't even have  
13 to register for that. When you go back to 1983 --

14 THE COURT: Slow down. Slow down. Here's  
15 question number one.

16 MR. MAHONEY: Sure.

17 THE COURT: It sounds as if you have agreed  
18 to this, but I want to make sure. I want you to be  
19 able to make the record you want to make here.

20 Is everyone here comfortable -- and that  
21 means Attorney Schulman, Attorney Garrity and you, Mr.  
22 Mahoney. May I keep under advisement the motion to  
23 determine status of counsel filed by Mr. Mahoney, the  
24 motion by Mr. Schulman to withdraw, the motion by Mr.  
25 Garrity to withdraw, and may I not rule on those until

1 after we've decided your motion to dismiss, Mr.  
2 Mahoney, and Attorney Schulman's motion to dismiss on  
3 SORNA, so they can stay in the case long enough to  
4 argue the legal points on your behalf?

5 MR. MAHONEY: And we're going to do that  
6 today; is that correct?

7 THE COURT: No.

8 MR. MAHONEY: Then I would do this, Judge. I  
9 will raise the issue of bail since now we have an  
10 issue of taking care of this and since you might be  
11 thinking about "dismissing" it.

12 THE COURT: I can't let you argue your motion  
13 till -- his objection is not due yet. He's not  
14 required by the rules to have objected until June  
15 11th.

16 MR. MAHONEY: Your Honor, you just said -- my  
17 motion went in April 30, 2012. You just said that my  
18 motion was first.

19 THE COURT: You're not listening. Your  
20 motion was a pro se motion.

21 MR. MAHONEY: Right.

22 THE COURT: You're not allowed to file pro se  
23 motions because you have lawyers. There are rules.

24 MR. MAHONEY: I understood the Federal Rules  
25 of Criminal Procedure. Those are the rules you've got

1 to play by. It's like a ball field.

2 THE COURT: And then Mr. Schulman filed the  
3 same motion with much more detail a couple of weeks  
4 later.

5 MR. MAHONEY: Right.

6 THE COURT: And a motion for late entry. Now  
7 that motion I paid attention to because I understood  
8 it.

9 MR. MAHONEY: Yeah, yeah, yeah.

10 THE COURT: Okay. Now, I paid attention to  
11 yours by reading it, but I didn't understand it until  
12 Mr. Schulman's motion came in and I said to myself,  
13 this is what Mr. Mahoney's talking about. This may be  
14 an invalid prosecution based on the timing of the  
15 regulations by the Department of Justice. Now I get  
16 it.

17 The problem is I would like to leave these  
18 lawyers in the case long enough just to argue that  
19 legal motion because I think, based on Attorney  
20 Schulman's brief, he'll do a very good job with it.

21 MR. MAHONEY: If he would, then I would ask  
22 the Court to release me on bail since I have 19 months  
23 in prison already. I think to hold me -- under the  
24 Eighth Amendment it's cruel and unusual punishment to  
25 hold me when a judge is thinking about dismissing the

1 case. I should be released automatically just based  
2 on your wording, Judge. If you're thinking about  
3 something that is valid, that is law, in which we know  
4 it is now because it's January 28, 2011, we know  
5 that's the -- no matter what, that's the final law. I  
6 should be able to be released with bail on those  
7 purposes if your Honor is thinking about dismissing  
8 the case.

9 THE COURT: Well, that's not the law of  
10 detention under the federal law that if a motion to  
11 dismiss is pending that you should be released on bail  
12 as a matter of principle. That's just not the law.

13 MR. MAHONEY: Then I would argue a motion for  
14 bail today then.

15 THE COURT: That's a separate issue that if  
16 you want to talk about it, we'll get to it, but I need  
17 to know whether you will let these two gentlemen  
18 sitting with you stay in the case long enough to argue  
19 the motion to dismiss.

20 MR. MAHONEY: Your Honor, in due respect to  
21 you, I need to know when you're going to let me be  
22 released on bail and when you're going to let me go.  
23 That's what I need to know.

24 Now I'm going to ask you the same question  
25 because -- I'm not entitled to a perfect trial, but I

1 am entitled to a fair trial.

2 THE COURT: Right. The answer to your --

3 MR. MAHONEY: We'll go halfway. When are you  
4 going to release me? This year? Next year? Ten  
5 years from now? Fifteen years? Let me know. That's  
6 going to be the big hinge on what I let these two do.

7 THE COURT: Well, if you want -- okay. The  
8 answer to your question is, you will not be released  
9 on bail while that motion is pending.

10 MR. MAHONEY: Okay. So I am not going to  
11 allow these two guys to -- right now -- I think at  
12 this point -- I've been talking to a couple of  
13 lawyers, even a friend of one of my friends, Professor  
14 Nelson Lovins, who spoke very highly of my --

15 THE COURT: Stop. The reporter can't -- you  
16 are talking a thousand miles an hour.

17 MR. MAHONEY: Right. I think my --

18 THE COURT: Listen. She can't keep up. We  
19 can't have a record if you talk that fast and it's --  
20 based on my observations, it is difficult for you to  
21 restrain yourself from talking that fast.

22 MR. MAHONEY: It's hard because I'm innocent,  
23 Judge. I'm 100 percent innocent. I've raised some  
24 issues. You see issues. Not only did you see issues  
25 in the discoveries that the government has put in --



1           THE COURT: Stop. We're talking about how  
2 fast you talk, and you start talking fast again.

3           MR. MAHONEY: Right. I think you've got to  
4 decide competency today right now. You've had it for  
5 19 months. To hell with this. I mean, if you are  
6 going to find me incompetent -- I do have an attorney,  
7 a couple of them, that I've been in touch with. If  
8 you want me to spend the money, then I'll have to  
9 spend the money. I don't like doing that because I  
10 can represent myself. But as far as being on bail  
11 release, Judge, holding me for 19 months on  
12 incompetency --

13           THE COURT: Slow down. Wait a minute. Slow  
14 down.

15           MR. MAHONEY: I've never done that before.

16           THE COURT: Slow down. Are you telling the  
17 Court that you have the means to hire counsel to  
18 represent you?

19           MR. MAHONEY: No. I'm not saying that at  
20 all. I'm asking the Court why it's taking him so long  
21 to find me competent or incompetent. That's the  
22 problem.

23           THE COURT: Well, my plan was to rule on that  
24 motion today. However, I would have thought as  
25 someone in your position -- and your lawyers may agree

1 or disagree and they can advise you -- but who was in  
2 a position to have the case dismissed outright, you  
3 might prefer that to a ruling on competency or at  
4 least that it precede the ruling on competency.  
5 Someone in your position might prefer to have the case  
6 decided or dismissed before there was a competency  
7 ruling. You apparently don't even share that view,  
8 but I think that maybe someone in your shoes  
9 might --

10 MR. MAHONEY: Right, and I don't --

11 THE COURT: I would like to hear Attorney  
12 Schulman. He's on his feet. Please be seated.

13 MR. SCHULMAN: Thank you, Judge. The only  
14 reason that I rise is that I want to make sure as Mr.  
15 Mahoney considers his options that he understands, as  
16 we've explained to him, the consequence of whatever  
17 determination on competency the Court may make.

18 It's my understanding that if Mr. Mahoney was  
19 found incompetent -- and that clearly wouldn't be for  
20 lack of intelligence but it would be for an inability  
21 to cooperate in his defense and the other matters that  
22 were discussed. If he were found incompetent, the  
23 Court would have no choice but to commit him for some  
24 period of time, so there would be further commitment,  
25 and that would indeed be followed by a determination

1 of whether he was --

2 THE COURT: Excuse me for a moment. I'm  
3 listening.

4 Mr. Mahoney, I want you to listen to what  
5 counsel is saying.

6 MR. MAHONEY: I just did.

7 THE COURT: You were shuffling papers. I'm  
8 going to let him continue, but it's important to me  
9 that you're hearing it because he's trying to explain  
10 to me that if the Court were to determine that you  
11 weren't competent there would be a significant period  
12 of commitment during the following proceedings, and  
13 he's trying to make that point so I want you to hear  
14 him, please.

15 MR. SCHULMAN: Thank you, Judge. There would  
16 be some period of commitment, and then the Court would  
17 need to determine whether Mr. Mahoney was restorable  
18 to competency. If he was, he could be committed and  
19 restored. And if he was not restorable -- while the  
20 case would be dismissed months and perhaps months and  
21 months down the down, as opposed to the time it might  
22 take to determine a motion, what would then happen  
23 would be a possibility of civil commitment under the  
24 civil commitment statute that now I can't obviously  
25 opine on.

1           THE COURT: Right.

2           MR. SCHULMAN: But a finding of incompetency,  
3 while certainly not punitive and not intended as any  
4 punishment, could have the result of essentially  
5 confinement for a significant period of time.

6           A finding that Mr. Mahoney was competent,  
7 while forfeiting a hearing on the motions that were  
8 filed, would result in a trial in the near future.  
9 But the motion to dismiss could not be decided in what  
10 could only be called the most intelligent fashion in  
11 terms of letting the government respond in writing and  
12 obtaining a recent and deliberative decision from the  
13 Court. Without knowing how the Court might rule, I  
14 know that all concerned would believe that when one  
15 has a complicated written motion that requires some  
16 deliberation for a decision the best way to do it  
17 would be to have all parties have suitable time. So I  
18 think as he makes these decisions he should consider  
19 those facts.

20           THE COURT: Now, the only point of that, Mr.  
21 Mahoney, and I want it to be clear, a minute ago I  
22 said I thought you might want the decision made on the  
23 dismissal before a decision made on competency  
24 because, as Mr. Schulman points out, a decision on  
25 competency could result in a lengthy commitment while

1 other issues are -- and you said to me a minute ago  
2 bail is very important to you, being released is  
3 important, and I understand that. That's why I  
4 thought it would be a good idea to possibly leave  
5 counsel in the case long enough to litigate this  
6 motion. It's not going to take long. It's due in ten  
7 days, this objection. We can schedule a hearing  
8 really shortly right after that on that motion to  
9 dismiss.

10 MR. MAHONEY: That's fine with me, your  
11 Honor, and I'm going to speak as quietly and as slowly  
12 as I can.

13 THE COURT: Yeah, do your best to speak  
14 slowly.

15 MR. MAHONEY: I think one of the most  
16 important issues we raised, and I raised, and the  
17 sister circuit in the Sixth Circuit in United States  
18 versus Miller clearly, clearly states that when you  
19 leave a state -- you go from New Hampshire, say, to  
20 Massachusetts, for an example -- you have to be in  
21 that state three -- longer than three business days.  
22 Weekends do not count. It clearly states in Miller.  
23 I was not -- I didn't even know the United States  
24 marshals were looking for me in October and November.

25 THE COURT: Excuse me a second. Counsel.

1           MR. SCHULMAN: I would caution Mr. Mahoney  
2 not to speak about the underlying facts of the case,  
3 because whatever he says in this proceeding --

4           THE COURT: Will be used against him.

5           MR. SCHULMAN: -- might be used against him  
6 at trial.

7           MR. MAHONEY: I certainly did not think they  
8 signed any affidavits in that case as well, if I'm not  
9 mistaken, I think, under United States versus Miller.  
10 I was not in Massachusetts --

11          THE COURT: Slow down.

12          MR. MAHONEY: -- longer than three business  
13 days.

14          THE COURT: What counsel was trying to say,  
15 though, was to be careful about speaking about facts  
16 because those factual statements you make --

17          MR. MAHONEY: Right.

18          THE COURT: Listen -- could be used against  
19 you not only in a trial in this Court but in a trial  
20 in state court where those very same statements could  
21 prove your guilt.

22          MR. MAHONEY: I understand that, Judge.

23          THE COURT: Okay. Just be careful. He's  
24 cautioning you.

25          MR. MAHONEY: Right. And the reason there is

1 that's why they haven't called an affirmative defense  
2 on the 2250. That's an affirmative defense because I  
3 had a heart attack, Judge, and I was admitted to the  
4 hospital. And my girlfriend, Kimberley Delisle, right  
5 there, we were there for two and half months. I  
6 couldn't even be released from that hospital until I  
7 had a place to go. So that would be an affirmative  
8 defense.

9 I'm not worried about the state charges or  
10 anything about what the state has to do because the  
11 state brought forward these charges.

12 The first thing that Detective Pike said,  
13 June 20, 2006, Mr. Mahoney pled guilty to a felony,  
14 failure to register, in Strafford Superior Court, and  
15 we know, and Attorney Huftalen will tell you, that is  
16 false.

17 THE COURT: All right. Listen. My question  
18 to you was not about -- see, I'm asking you a specific  
19 question and you're bringing up a different issue  
20 because you feel the need to say it, but we can't  
21 conduct court that way. That's why you can't  
22 represent yourself.

23 MR. MAHONEY: That's why I want to get the  
24 jury. I want to pick the jury on Tuesday of 2012, and  
25 let's get this show on the road.

1           THE COURT: Here's the problem. Here's why  
2 you can't have a jury. You can't have a jury next  
3 week for this reason. You cannot represent yourself.  
4 You're not competent to represent yourself pro se.

5           MR. MAHONEY: I would object to that because  
6 of the fact that Professor Nelson Lovins and a few of  
7 my attorneys who I've been with and who I've worked  
8 with, including my girlfriend -- I know the law very  
9 well, Judge. I know the elements of the crime, the  
10 nature and consequences of the charges. I know  
11 exactly what's going on. None of you here are even in  
12 my caliber.

13           THE COURT: I know none of us are in your  
14 caliber but --

15           MR. MAHONEY: Not in the caliber of sex  
16 offender registration. No way.

17           THE COURT: Listen. Here's the problem.  
18 Your knowledge and understanding of the law is not the  
19 issue.

20           MR. MAHONEY: What's the issue then on the  
21 competency? The other one is that I would be a threat  
22 to myself, to others and to the community.

23           THE COURT: No. Listen. It's not about --  
24 representing one's self or being competent even to  
25 stand trial with counsel is not just about



1 understanding the law. It's about being able to  
2 conduct a defense on your own or, if you had counsel,  
3 to cooperate with counsel in your defense. And you --  
4 at least on the pro se end of it you are not capable  
5 of -- you can't even have a conversation with me in  
6 court.

7 MR. MAHONEY: But, Judge, I get emotional  
8 when it says right here, September 23, 1983, I was  
9 convicted of rape, and this was in the discovery.  
10 Yes, I get emotional about that. That's a lie.

11 THE COURT: I understand you do. The  
12 problem, Mr. Mahoney --

13 MR. MAHONEY: Then you've got to commit me  
14 then, if that's what you've got to do, Judge.  
15 Nineteen months is nineteen months, and that's it.

16 THE COURT: Listen, listen. I understand  
17 you're emotional. The problem is, part of being in  
18 court representing yourself is being able to control  
19 your emotions well enough to conduct yourself, and my  
20 observations and the observations of anyone who has  
21 examined you is that you can't.

22 MR. MAHONEY: Okay. But you haven't asked me  
23 the questions on --

24 THE COURT: I don't need to ask you -- I can  
25 ask you the questions, but I have watched you now for

1 several times. You can't -- when I ask you a question  
2 in court -- which would happen in a trial. I would  
3 ask you questions sometimes.

4 MR. MAHONEY: Well, it would be objection is  
5 sustained or overruled.

6 THE COURT: Well, it's not just that.  
7 Sometimes we talk to each other in court, and you  
8 almost never answer my question. You start in on a  
9 speech about something that's bothering you, which is  
10 maybe understandable because you're not in control of  
11 your emotions.

12 MR. MAHONEY: When you look at a document --  
13 could I please get your Honor to look at this  
14 document, please? Can I please just give this to you  
15 to look at?

16 THE COURT: Sure. The court security officer  
17 will take it.

18 MR. MAHONEY: Oh, I'm sorry. I'm sorry.  
19 Just look at that and just tell me what you think.  
20 Tell me what that -- they both say attempted rape.  
21 Let's see what September 23, 1983 says. Thank you,  
22 Judge.

23 THE COURT: This is an example of what I'm  
24 saying.

25 MR. MAHONEY: This is why I'm upset.

1           THE COURT: I understand why you're upset.  
2 But even if you're upset, lots of people who sit in  
3 that chair are upset.

4           MR. MAHONEY: I know. But let the jury  
5 decide that. That would be up to them, not up to me.

6           THE COURT: Well, see, you won't let me talk  
7 to you long enough to tell you why that can't happen.

8           MR. MAHONEY: Okay. Go ahead.

9           THE COURT: You cannot represent yourself,  
10 and you have "fired" every lawyer that has been  
11 appointed for you.

12          MR. MAHONEY: For good cause.

13          THE COURT: Listen. Two of them you've  
14 reported to the professional conduct committee for  
15 reasons I can tell you are not good cause.

16          MR. MAHONEY: They didn't cite case law.  
17 Ineffective assistance against Attorney Garrity.  
18 That's a fact.

19          THE COURT: Listen. This is an example of  
20 why you cannot represent yourself.

21          MR. MAHONEY: When are you going to let me  
22 out? That's what I want to know. You're not giving  
23 me a fair trial in the United States District Court.

24          THE COURT: Here's what I'm thinking. You  
25 want to let a jury decide?

1           MR. MAHONEY: A jury. I want it Tuesday to  
2 start, as it should be. No more delays.

3           THE COURT: Here's the -- Mr. Mahoney, put  
4 those papers down.

5           MR. MAHONEY: That's a speedy trial.

6           THE COURT: Put those papers down. It's my  
7 job to protect you from the prosecution, and the  
8 system has got to be fair to you. It will not be fair  
9 to you if you go to trial on your own. You're not  
10 competent. And you will not work with any lawyer. So  
11 if you want to get it to a jury, you've got to be able  
12 to work with a lawyer. There's no lawyer that you  
13 will let represent you, at least not one that you've  
14 met, and any lawyer that could represent you on  
15 Tuesday -- listen -- could never be prepared by  
16 Tuesday.

17           MR. MAHONEY: If I may, just one thing?  
18 Kimberley Delisle is right here.

19           Kimberley, how many jury trials have I done  
20 in the last year? At least three that I've won.

21           THE COURT: Hey -- see, lawyers who are  
22 competent know that they can't shout to someone in the  
23 gallery and ask questions.

24           MR. MAHONEY: I was just trying to get my  
25 girlfriend's opinion because she was there.

1           THE COURT: I'm not suggesting your  
2 girlfriend doesn't know evidence that might be  
3 relevant, but you cannot do things that way.

4           My only goal today was to see if you were  
5 willing to let these lawyers represent you long enough  
6 to argue a motion to dismiss on your behalf. You've  
7 said no.

8           MR. MAHONEY: I ask you to read the document,  
9 Judge, and that's the only part of discovery, and  
10 that's a very key issue. That's beyond reasonable  
11 doubt.

12          THE COURT: I'm about to read it.

13          MR. MAHONEY: Thank you. And I think you  
14 should release me on that at well, but go ahead.  
15 Sorry.

16          THE COURT: Are you going to let me read it  
17 now?

18          MR. MAHONEY: Yeah, you can read it, Judge.

19          THE COURT: Okay. Now your point, of course,  
20 is that -- by the way, it has nothing to do with  
21 anything we're talking about here except to explain to  
22 me why you're upset.

23          MR. MAHONEY: No. The document registration  
24 form that I had to sign -- it was because of that,  
25 Judge, that -- that's it, you know. That's the truth.

1           THE COURT: Your point is it states the crime  
2 incorrectly.

3           MR. MAHONEY: That's what -- she was the  
4 commissioner at that time, not Holden. She was the  
5 commissioner at that time. And when she was the  
6 commissioner she said, Mr. Mahoney -- and I talked to  
7 her on the phone, and as a matter of fact Kimberley  
8 Delisle was -- and she said, Mr. Mahoney, you were  
9 convicted of aggravated rape on September 23, 1983,  
10 and she puts it in her own statement, and that's a  
11 fact. This case should be over just based alone -- on  
12 her fact alone. I had to sign and register to that,  
13 Judge, when it was the wrong charge. Fairness is  
14 fairness. That's why I looked at that.

15           THE COURT: All right.

16           MR. MAHONEY: How could a Court get around  
17 the facts, the discovery that --

18           THE COURT: I am not going to -- Mr.  
19 Schulman, I am not going to allow your motion to  
20 withdraw. I'm going to request that you remain in the  
21 case long enough to argue this motion to dismiss  
22 you've filed. All right?

23           MR. SCHULMAN: Thank you, your Honor.

24           THE COURT: I wanted to do it with Mr.  
25 Mahoney's consent, but he's unwilling to.

1 MR. MAHONEY: We're looking at facts that  
2 were definitely -- those are not facts, Judge. Those  
3 facts are complete lies right there, and he knows it.

4 THE COURT: Because I think it would be in  
5 Mr. Mahoney's best interest -- for the reasons that  
6 you tried to explain a minute ago on the record -- for  
7 the motion to dismiss to be resolved before the issue  
8 of competency. Because I don't think he needs to be  
9 competent to stand trial for you to represent him on a  
10 motion to dismiss. It's a purely legal argument that  
11 he has no role in assisting you with.

12 Mr. Huftalen, your objection is due June  
13 11th. I would like you to do your best to get that  
14 filed timely so I can give Mr. Mahoney his hearing as  
15 soon as possible. Because he is right about one  
16 thing. This case is taking too long.

17 MR. MAHONEY: It is, Judge. And the speedy  
18 trial law just was changed five months ago by Judge  
19 Lostoceny Galley and he clearly states, 148 days on  
20 incompetency is a disgrace. It's a disgrace to this  
21 Court and to me and to my integrity, and to anyone  
22 else in here to say that I'm incompetent to stand  
23 trial. I might be hyper, but that doesn't mean I'm  
24 incompetent. There's a big difference right there.  
25 And I do know the laws. I do know the elements of the

1 crimes. I do know everything. But when you look  
2 at -- I want Jill Rockey here. That's my first  
3 witness right there on that trial. And I know you can  
4 make me incompetent so I can't have a trial, but in  
5 this case, Judge, I'm really, really competent. And  
6 believe me, I'm not incompetent based on facts.  
7 Emotions? Yes, you're right. But look at that,  
8 September 23, 1983, discovery -- and he puts it in  
9 discovery. That should be dismissed right there.

10 THE COURT: All right. Now, Mr. Mahoney,  
11 I'm going to ask you a question, and I want a straight  
12 and calm answer, and I'm going to ask some people in  
13 the courtroom if they can add to it.

14 What is the state right now of your  
15 medication at Cheshire County? Are you getting your  
16 meds?

17 MR. MAHONEY: Yes. I'm getting my own  
18 correct medication of Xanax three times a day, and I'm  
19 getting my Seroquel three times a day.

20 The only problem we have -- if you notice, I  
21 have a cast. This was done by -- I think I showed you  
22 the pictures of the five Rochester police officers who  
23 manhandled me. I do need an operation. I can no  
24 longer walk anymore, but I do need to get my 30  
25 milligrams of Oxycodone, which I was getting on the



1 street, and I do need surgery, and I've had this for  
2 five weeks. They do have all the --

3 THE COURT: Now, see, here's the problem.  
4 You're making statements about drugs you were  
5 obtaining on the street.

6 MR. MAHONEY: Well, you're going to hold me  
7 incompetent. I've got to get surgery.

8 THE COURT: It's very difficult to let you  
9 say things and incriminate yourself.

10 MR. MAHONEY: The pain level alone is very,  
11 very aggravating, believe me, and then you've got the  
12 90-degree weather.

13 THE COURT: You are in the county facility in  
14 this state which has the most liberal, flexible  
15 narcotics policies of any.

16 MR. MAHONEY: But anything you can try to do  
17 to get this pain away that I've been dealing with --  
18 and I can't get out and I've been in 19 months.

19 THE COURT: You're getting your Seroquel.

20 MR. MAHONEY: I'm getting my Xanax and  
21 Seroquel three times a day, morning, noon and night,  
22 and I wouldn't ask to go anywhere else. If the Court  
23 found me incompetent, I guess I would ask to remain at  
24 the Cheshire County Jail because I'm getting the  
25 correct medication and I'm seeing a psychiatrist once

1 a week, I mean, but --

2 THE COURT: No. If you were found  
3 incompetent, the proceedings would require that you be  
4 committed to a federal facility for an evaluation on  
5 dangerousness -- well, on the ability to restore your  
6 competency first.

7 MR. MAHONEY: Right.

8 THE COURT: But that would not be in Cheshire  
9 County. That would be somewhere --

10 MR. MAHONEY: Remember, under 4241 your Honor  
11 does have -- under (e), under 4241(e), you do have a  
12 right to release me on a conditional discharge back to  
13 my psychiatrist that I've been seeing for seven years.  
14 Your Honor does have the right.

15 You have two choices here. One, does he need  
16 to go back and get medication to be turned over to the  
17 Attorney General; or two, I'm making a decision that  
18 Mr. Mahoney can be released on a conditional discharge  
19 back to his doctors.

20 THE COURT: Slow down. I'm not prepared to  
21 do that.

22 MR. MAHONEY: I didn't think you would, no.  
23 I mean, I've been held 19 months for nothing. I mean,  
24 you might as well hold me for another goddamn 19  
25 months for nothing with facts like that right there.

1 I want to get her job because, your Honor, she said  
2 she was under oath. She's coming down. She's being  
3 fired for that. I do have an extra one. So you can  
4 keep that one and put it on your fridge.

5 THE COURT: When you say "she", who are you  
6 talking about?

7 MR. MAHONEY: Jill Rockey. September 23,  
8 1983, what does that charge say, Judge? It says rape.

9 THE COURT: Sit down.

10 MR. MAHONEY: It doesn't say attempted. I'm  
11 just trying to get this on. Excuse me here. You can  
12 hold me in contempt, fine, but I have to make a valid  
13 excuse.

14 She put on September 23, 1983, as rape. I  
15 signed all those 16 documents for rape, not for  
16 attempted rape.

17 Thirty years later he said, nonetheless,  
18 we'll bring up a 30 year old case. Then you've got to  
19 change the law's subsequent history. No, because  
20 that's not -- that's not -- this is trial by ambush,  
21 Judge.

22 MR. SCHULMAN: I wanted to address the  
23 Court's concern about medication. Shortly after I  
24 began representing Mr. Mahoney I received a list of  
25 his medications, which I don't have with me today, and

1 Mr. Mahoney waived his privilege. I got it directly  
2 from the jail at his request. It sounds like what  
3 he's taking now. I don't know that there's been any  
4 change.

5 I've had no cause to go back and seek any  
6 sort of evaluation to figure out whether that's the  
7 right medication or not. What I've been told  
8 basically from everybody is that the reason he's in  
9 Cheshire is because of their medication policy.

10 THE COURT: Yes.

11 MR. MAHONEY: Right.

12 MR. SCHULMAN: So we would presume he's  
13 getting the best medication possible but --

14 THE COURT: It doesn't seem to be controlling  
15 his moods here.

16 MR. MAHONEY: Of course my ankle is numb,  
17 too, Judge. I mean, I have excruciating pain. This  
18 is pain that's chronic. I have a brace at home that's  
19 all metal. In fact, that was courtesy of the  
20 Rochester Police, which I gave you. I know you don't  
21 want to hear that because you don't want to -- you can  
22 go to the press conference tomorrow and get those five  
23 animals who did this to me -- those five Rochester  
24 police officers. I sent you the colored photographs.

25 THE COURT: Please be seated. Mr. Schulman

1 can be seated. Mr. Garrity.

2 MR. GARRITY: On the issue of medication, I  
3 can tell the Court I've had a couple of conversations  
4 with the individual who prescribes medication at  
5 Cheshire County, and right now I can't remember his  
6 name. I've got the materials in my file. He's  
7 indicated that Mr. Mahoney has been given the  
8 appropriate medication and that he's as --

9 THE COURT: I guess the stress of today is --  
10 go ahead.

11 MR. GARRITY: -- in as good a state as  
12 possible.

13 THE COURT: I guess the stress of today might  
14 have wound things up a little bit, and that's  
15 understandable.

16 MR. MAHONEY: Excuse me. I'm sorry, your  
17 Honor. But like I said, when I see documentation that  
18 have been admitted into discoveries -- I mean, she was  
19 totally wrong when she said rape. And I'm sorry.  
20 That's a crucial part of this because, you know --  
21 first of all, you can go across state lines, so it's  
22 not a federal charge. If you can make me incompetent  
23 and then civilly commit me, then of course I would  
24 have to hire somebody to take that and then look at  
25 the situation and say, hey, did he have a valid

1 federal charge to begin with, and of course --

2 THE COURT: Let me ask you -- I want to have  
3 a calm conversation with you about something. I'm  
4 going to try to do it calm once. If we can't do it  
5 calm, I'm not going to have the conversation, me and  
6 you. Here's my question for you.

7 MR. MAHONEY: Yes, sir.

8 THE COURT: I understand you didn't want  
9 Attorney Levin and you reported him to the PCC. You  
10 think he did something unethical, and you want him out  
11 of the case. I understand you've done the same thing  
12 with Attorney Garrity. You don't think he should be  
13 in the case because he's violated the rules of  
14 professional conduct, according to you. I don't agree  
15 with you, but I do understand you.

16 MR. MAHONEY: It is in the law.

17 THE COURT: Listen. I don't agree, but I do  
18 understand.

19 MR. MAHONEY: It just has to be good cause,  
20 Judge. It doesn't have to be specific but just good  
21 cause to remove counsel.

22 THE COURT: So let's get to the next  
23 question.

24 MR. MAHONEY: Yes.

25 THE COURT: Sitting next to you, to your

1 left, is Attorney Schulman.

2 MR. MAHONEY: Right.

3 THE COURT: I think both of your lawyers up  
4 till now did a good job for you, but Attorney Schulman  
5 is your new lawyer. He's doing a very good job. I  
6 guess what I need you to do without talking a hundred  
7 miles an hour and without yelling --

8 MR. MAHONEY: I'm sorry. I'm hyper.

9 THE COURT: -- I want you to tell me why you  
10 want to do something which I view as very unwise,  
11 which is proceed without his very able assistance.

12 MR. MAHONEY: And I'll explain that, Judge.  
13 On this instant case that we're at, the September 23,  
14 1983 trial, not only did I go to trial on that date  
15 way back 30 years ago, but I never in my life ever  
16 received from my attorney, Charles Clifford at that  
17 time, who I will start litigation when I get out, he  
18 never even showed me any evidence. I was just a  
19 21-year-old kid at that time.

20 Now I'm a man. I've studied law for 28  
21 years. I've done every single case since 1984. My  
22 record, 97 charges, 62 dismissals. I've had a great  
23 record as far as representing myself. This is a case  
24 that went back 30 years ago.

25 Attorney Schulman, he's great. No way am I

1 more intellectual than him. But again, he mentioned  
2 the fact -- and I know he only parroted it. He said,  
3 hey, September 23, 1983, you have been charged on this  
4 motion with attempted rape.

5 But then I come in here a little bit  
6 hyperactive saying, wait a minute, this discovery says  
7 Jill Rockey. I had to register for the September 23,  
8 1983 charge of rape. That says rape.

9 THE COURT: Just take a deep breath. It  
10 sounds like what you're trying to tell me, if I'm  
11 reading you -- my question for you is, why would you  
12 want to proceed without very good counsel? I think  
13 you're trying to tell me that you just think that --

14 MR. MAHONEY: He doesn't know the facts,  
15 Judge, basically.

16 THE COURT: Okay. Is that what it is?

17 MR. MAHONEY: Absolutely. He will say  
18 September 23rd, but he will say this, attempted rape,  
19 but Commissioner Jill Rockey in 2007, five years ago,  
20 said, no, you're registered to rape, which was  
21 aggravated rape, which is equivalent to aggravated  
22 felonious sexual assault. Every single --

23 THE COURT: Okay. I guess what I'm saying  
24 is, I think Attorney Schulman has demonstrated to you  
25 with his filings that on the law he's very, very able,



1 right?

2 MR. MAHONEY: Right. Where I see the  
3 inconsistency with this, with your Honor, that it's  
4 rape. Which is it?

5 THE COURT: Wait a minute. You're so focused  
6 on this little --

7 MR. MAHONEY: That's a big issue, Judge.  
8 That's part of the whole case.

9 THE COURT: Okay. But what I'm asking you is  
10 this.

11 MR. MAHONEY: Yes, sir.

12 THE COURT: He's a very good lawyer. Don't  
13 you think that with very little time and study he  
14 could master the facts of this case just as well --  
15 not as well as the person who lived through it, but  
16 just as well as everybody? Because remember this and  
17 just think about this. I'm not going to let you  
18 represent yourself.

19 Given that that's the case, wouldn't it be  
20 wise for you to proceed with a lawyer who is very  
21 able, willing to put the time in, willing to obviously  
22 fight on your behalf, because he's already fighting?

23 MR. MAHONEY: Right.

24 THE COURT: Wouldn't that make more sense to  
25 let him do that at your side, litigate this motion to

1 dismiss, and then if possible proceed to trial?

2 MR. MAHONEY: Right. And I think at that  
3 point -- I think because I'm not going to take the  
4 stand, I think it's very essential in any case that  
5 I've done and what I've been doing the last three --  
6 I'm 3 and 0 in the last three jury trials that I've  
7 picked in the panel, and I got one overturnment in the  
8 Massachusetts appeals court, but I want the jury to  
9 hear from me. I want them to look me in the face and  
10 say -- and let them know that I never lived in  
11 Massachusetts from July 31, 2010, till November 5,  
12 2010. I want the jury to hear my voice. So if I  
13 don't take the witness stand I'm not going to --

14 THE COURT: So as I understand you -- so what  
15 you're telling me is really the reason you don't want  
16 to proceed with Attorney Schulman or really any  
17 lawyer --

18 MR. MAHONEY: I want the jury to hear from  
19 me.

20 THE COURT: Okay. Right. So you think  
21 there's no lawyer that would allow you to testify in  
22 your own behalf, is what I'm asking you.

23 MR. MAHONEY: Judge, when you hear from me,  
24 what do you hear? You do hear emotion. You see  
25 discovery that the government put in that says a

1 different charge. But one thing you're looking at, I  
2 never lived in Massachusetts on July 31st. I'm not  
3 showing deception. You should dismiss this today and  
4 hit that hammer.

5 THE COURT: I'm trying to ask you a question.

6 MR. MAHONEY: Right. And my answer is I am  
7 innocent and I am going to do what I think is in the  
8 best interest of me. By sitting here being deaf, dumb  
9 and mute is not going to cut the cake.

10 But by explaining it to the jury and being  
11 cool, calm and collected, because this is my job --  
12 although these two lawyers don't think that I'm an  
13 attorney, but I am an attorney. He spoke with Nelson  
14 Lovins, he'll tell you, but I want the jury to hear  
15 from me, because you know why? Hey, who gives a shit  
16 what he did 31 years ago. He's --

17 THE COURT: I'm going to ask you not to  
18 swear.

19 MR. MAHONEY: I'm sorry. But who cares what  
20 he did 30 years ago. I want to hear it from him. And  
21 then I'll have my suit on and then they can hear it  
22 from me.

23 But one thing they don't hear from me, nobody  
24 does, you don't hear deception. They will tell you --  
25 my witnesses are there, those are the two girls right

1       there I live with -- I never lived in Massachusetts.

2               THE COURT:   So is it that you don't think an  
3       attorney would ever let you testify or is it --

4               MR. MAHONEY:   I can't because --

5               THE COURT:   Let me finish the question.

6               MR. MAHONEY:   Right.

7               THE COURT:   Or is it that you just think a  
8       jury needs to see you conduct this litigation?

9               MR. MAHONEY:   I think what I think of this --  
10       Judge, what I look at is because of my record.   And  
11       I'm not an angel and I'm not trying to tell you I'm an  
12       angel.   I did 21 years as an iron worker, but we don't  
13       know nothing.   We're dummies.   But anyway, that's what  
14       I've always liked about iron workers.   We're just  
15       dummies.

16               I want a jury to hear from me.   If I have to  
17       sit here -- I cannot take the witness stand just based  
18       on my record alone, and I'm not going to.   But if a  
19       jury hears from me and they see, oh -- Judge, you know  
20       I never lived in Massachusetts, and I can bet you your  
21       life you already know the decision.   Mr. Mahoney is so  
22       adamant.   I never did.   And those two girls can back  
23       me up.

24               THE COURT:   I think I understand now.   I'm  
25       going to try to say it, and tell me if I'm wrong.   So

1 your point is -- don't interrupt me, please. I want  
2 to finish the thought.

3 MR. MAHONEY: I won't Judge. I won't.

4 THE COURT: Your point is no lawyer would put  
5 you on the stand because of your record.

6 MR. MAHONEY: I won't go on the stand. Oh,  
7 sorry.

8 THE COURT: Even if you were a lawyer you  
9 wouldn't put yourself on the stand.

10 MR. MAHONEY: I wouldn't put myself. I  
11 wouldn't put any of my clients on the stand if I'm an  
12 attorney.

13 THE COURT: It allows you to be heard by the  
14 jury --

15 MR. MAHONEY: Right.

16 THE COURT: -- without taking the stand.

17 MR. MAHONEY: Right. And they could hear the  
18 deception. Because you know I never lived there. Now  
19 let's be honest. You see the record there on 122.  
20 Clearly it's September 23, 1983 rape. You should  
21 dismiss it. The hammer should be down now, case  
22 dismissed automatically, and not based on competency.  
23 I am an emotional person, but that's part of being  
24 emotional. My leg has been fractured in 17 places.

25 THE COURT: Okay. Charli --

1 THE CLERK: Yes, Judge.

2 MR. MAHONEY: So like that's my information  
3 as to --

4 THE COURT: Well, I think I understand you  
5 now. I actually do see your point now.

6 MR. MAHONEY: You do?

7 THE COURT: I can't let you represent  
8 yourself.

9 MR. MAHONEY: But I can fight that, too, in  
10 the First Circuit. That's why we've got the First  
11 Circuit, so we can file appeal requests, which I will  
12 do if you deny that. Because that is a perfect  
13 motion, by the way, motion to dismiss and proceed pro  
14 se. I think that was very well put together, Judge,  
15 but you didn't give me the credit for that, but it  
16 was. I did that myself.

17 THE COURT: All right. Now, the motion for  
18 recusal, to recuse me, number 47, that's denied as  
19 baseless.

20 The motion to determine status of counsel,  
21 number 83, that remains under advisement.

22 Number 84, the motion for Andrew Schulman to  
23 withdraw, that remains under advisement pending  
24 resolution of document number 92, the motion to  
25 dismiss the case under SORNA.

1           Number 85, the motion to dismiss counsel and  
2     proceed pro se, that is under advisement.

3           Motion number 86, motion for Paul Garrity to  
4     withdraw, that's granted. There's no reason for the  
5     taxpayers to pay two counsel for this case. Mr.  
6     Schulman appears to be -- and because Mr. Mahoney is  
7     laboring under the impression -- I say a delusion --  
8     but under the impression that Mr. Garrity has  
9     committed some type of unethical conduct and that  
10    there's good cause to discharge him, I'm going to  
11    allow him out of the case.

12           MR. MAHONEY: We seek labor that's the truth,  
13    Judge. That's all.

14           THE COURT: The motion to dismiss, number 87,  
15    that Mr. Mahoney filed pro se, it's a pro se motion  
16    and therefore an improper motion. It will be  
17    considered, though, in light of motion number 92,  
18    which is the same motion. It's the same motion.

19           MR. MAHONEY: It's status of counsel.

20           THE COURT: No, it's not status of counsel.  
21    It's the motion to dismiss which Mr. Schulman filed.  
22    It's making the same point you raised in motion number  
23    87, but it's making it in a much more detailed way.

24           MR. MAHONEY: I would just hope Tuesday that  
25    we would have the trial, Judge, and we would be able

1 to get it underway really, because I've got 127  
2 witnesses I have to call, including Eric Holder, and  
3 I'll insist that he gets this case because I want to  
4 hear what his administrative procedural act is and  
5 when he made that retroactive. I believe that's  
6 crucial.

7 THE COURT: Those issues are going to be  
8 actually decided and resolved in the concept of a  
9 motion to dismiss. I can assure you with great  
10 certainty that we will not be hearing evidence from  
11 the attorney general on that.

12 MR. MAHONEY: It's exculpatory. It's in my  
13 favor.

14 THE COURT: Yeah, I know. I know you think  
15 you understand how that part of the constitution  
16 works, but your understanding while in some ways valid  
17 is flawed in many others and has holes in it. And I  
18 wish I could explain that to you, but I can't because  
19 I don't think you will listen to me. The whole  
20 exculpatory evidence analysis doesn't really pertain  
21 to that issue.

22 The issues about the applicability of SORNA  
23 and when it became applicable, whether it had  
24 retroactive effect and the ways that you have  
25 questioned are issues yet to be decided without the



1 testimony of the Attorney General of the United  
2 States.

3 MR. MAHONEY: Right. Well --

4 THE COURT: I'm ruling here on motions.  
5 Please don't interrupt me.

6 Number 91 was already granted, and that is as  
7 far I'm willing to go today.

8 I asked about the meds only because you're  
9 agitated today but I think -- I'm told that your meds  
10 are working well.

11 MR. MAHONEY: Yeah.

12 THE COURT: In general, I think it's just the  
13 stress of today that's got you a little bit excited.

14 MR. MAHONEY: My leg and my arm. And of  
15 course the documents that have been presented in this  
16 case to me under the discovery rules, Judge, under  
17 Brady versus Maryland and --

18 THE COURT: Do you want me to keep this  
19 letter that you gave me? Do you want to keep it? Do  
20 you have another one?

21 MR. MAHONEY: I have another one, Judge. You  
22 may keep that one, if you like. I have another one.  
23 But I think it speaks really, really for itself.  
24 That's one of the key issues. She will be the first  
25 witness. If I am lucky enough to get a jury trial,

1 she'll be the first witness on this case because she  
2 clearly said rape.

3 THE COURT: Well, if you're competent to  
4 stand trial and to assist your counsel in the conduct  
5 of trial, you will get a jury trial hopefully in  
6 fairly short order. But I'm not going to make that  
7 decision until I decide if I should dismiss your case  
8 outright under the applicable law that you and  
9 Attorney Schulman have raised. Yes, sir.

10 MR. SCHULMAN: Judge, I don't think -- I  
11 could be wrong -- when you were listing off the  
12 motions that you ruled on Mr. Mahoney's pro se motion.  
13 He called it a motion in limine to dismiss for  
14 improper venue.

15 THE COURT: Yes.

16 MR. SCHULMAN: And he had an attached case.  
17 There was an objection that was filed by the  
18 government to that motion.

19 THE COURT: Let me ask you this question.  
20 Will you be supplementing that motion in any way?

21 MR. SCHULMAN: I certainly can. I think --  
22 as the government noted, there's an issue of proof  
23 aspect to it that might come up in the context of a  
24 Rule 29 motion, and I think at least -- I think at  
25 least --

1           THE COURT: Right. You're telling me that  
2 you think it's a colorable issue but perhaps in a  
3 different procedural posture?

4           MR. SCHULMAN: I think that it's a colorable  
5 issue that if it were mine to raise I would not likely  
6 have raised it in this posture. It having been  
7 raised, do I think it's colorable to argue? I suppose  
8 it's colorable to argue, and I can supplement it.

9           I'm not arguing at all against what Mr.  
10 Mahoney is suggesting by saying that the same issue --  
11 as frequently happens -- can come up at different  
12 junctures in a case, and the best juncture for it to  
13 come up --

14          THE COURT: Rule 29.

15          MR. SCHULMAN: -- would be one with facts.  
16 But nonetheless, I think I would like the opportunity  
17 to supplement it seeing as he went to the trouble to  
18 brief an issue that does have some law behind it.

19          THE COURT: Okay. I agree. What I'll do is  
20 this. I will let you adopt that motion as counsel, so  
21 it's no longer an improper motion, it's filed with  
22 counsel, and I'll let you supplement it. How much  
23 time would you like?

24          MR. SCHULMAN: A week.

25          THE COURT: All right. A week. The U.S.

1 Attorney has already objected. If you need to  
2 supplement your objection, we'll let you do that.

3 MR. HUFTALEN: Thank you.

4 THE COURT: All right. So a week would be --  
5 a week from today is the 8th. All right. Thank you,  
6 counsel.

7 MR. SCHULMAN: Thank you.

8 MR. MAHONEY: Thank you.

9 THE COURT: I just leave you with this, Mr.  
10 Mahoney -- with just something to think about. You've  
11 had very able counsel throughout the case, and you've  
12 got very able counsel now. I think you should -- I  
13 understand your point that you would like the benefit  
14 of the jury hearing from you and seeing --

15 MR. MAHONEY: Deception. There's no  
16 deception in my voice.

17 THE COURT: -- and seeing that you're earnest  
18 and --

19 MR. MAHONEY: Absolutely.

20 THE COURT: -- not deceiving them without  
21 having to take the stand.

22 MR. MAHONEY: Absolutely.

23 THE COURT: It's a tactical decision.

24 MR. MAHONEY: It's a strategical decision.

25 THE COURT: Right.

1 MR. MAHONEY: I want to correct that.

2 THE COURT: We have strategy and we have  
3 tactics --

4 MR. MAHONEY: Right, right.

5 THE COURT: -- in furtherance of strategy,  
6 and those are decisions counsel makes.

7 I will say this to you. Given that you  
8 know -- and you know this -- I'm not going to permit  
9 you to proceed pro se, you should consider the  
10 possibility of allowing Mr. Schulman to continue. If  
11 you're devoted to the idea of taking it all of the way  
12 up to the circuit and the Supreme Court that you  
13 should be allowed to represent yourself, I guess  
14 there's nothing I can say to dissuade you, but you  
15 should consider Mr. Schulman continuing as your  
16 counsel.

17 MR. MAHONEY: Again, Judge, I just want to  
18 reflect that -- I mean, this isn't an instant case  
19 where this just happened. We're talking about a 30  
20 year old case, Judge, and we're talking about police  
21 reports that are unreadable. So, first of all, we're  
22 going to need an expert to read those documents which  
23 I think the government is saying that I had to  
24 register to.

25 I sent Attorney Schulman those discoveries

1 and he's -- not one person in this courtroom can read  
2 the 1983 police report.

3 THE COURT: Okay. That said --

4 MR. MAHONEY: That's crazy. That's what I'm  
5 being charged with.

6 THE COURT: I want to hear from Mr. Schulman  
7 in a minute, but you just said you're going to need an  
8 expert to read the reports. You want to go to trial  
9 Tuesday.

10 MR. MAHONEY: I'm ready Tuesday, Judge. I'm  
11 ready to pick a jury, and then I'll have my witnesses  
12 subpoenaed.

13 But you've got to remember one thing, Judge.  
14 When the United States marshals went into my house and  
15 they asked me if I lived at 115 Elm Street -- first,  
16 this is just for the record -- not only did my mother  
17 and father and sisters say I didn't live there, but  
18 they haven't seen me or talked to me in eleven years.  
19 That's the only woman I've talked to in eleven years  
20 right there. Period. This is factual.

21 THE COURT: It sounds like you're telling  
22 me -- tell me if I'm wrong. It sounds like you're  
23 telling me that it's more important to you that the  
24 jury hear you than it is that you successfully  
25 represent yourself and achieve an acquittal; is that

1 true?

2 MR. MAHONEY: I would think at this point  
3 because of the fact that --

4 THE COURT: Before you go on a speech, answer  
5 me yes or no.

6 MR. MAHONEY: Yes, because of the fact that  
7 if I win this jury trial I'm going to ask your Honor  
8 to dismiss it with prejudice, which means it will  
9 never ever be brought up again, meaning I will never  
10 ever have to register again. I think that's really  
11 the point I want to get across.

12 THE COURT: Oh, you'll never have to register  
13 again. Okay.

14 MR. MAHONEY: I'll never have to register  
15 again. Oh, no. That will be me back here. This is a  
16 30 year old case.

17 THE COURT: And you think that would be the  
18 result of an acquittal?

19 MR. MAHONEY: I believe I would have to get  
20 an acquittal because I never lived in Massachusetts or  
21 went across state lines.

22 THE COURT: Well, my question to you was --  
23 and I want to hear from Attorney Schulman because I  
24 cut him off a minute ago. Did you understand me? It  
25 sounds to me like it's more important for you to be

1 able to tell your story to a jury than it is to  
2 achieve an acquittal.

3 MR. MAHONEY: Well, I mean, I think it would  
4 be because I want to set a precedent in this case that  
5 you cannot just federally charge people that you  
6 assume went across state lines.

7 I'm presumed innocent, Judge. Remember that.  
8 I'm presumed innocent. I never, ever, ever lived in  
9 Massachusetts from July 31, 2010 to November 5, 2010.  
10 How many times do I have to -- I'll stay here -- you  
11 can hang me today.

12 THE COURT: Slow down. Slow down. She's  
13 trying to keep up.

14 Mr. Schulman, what did you want to say?

15 MR. SCHULMAN: What I think I need to say is  
16 the following: I'm delighted to stay on as counsel of  
17 record. I would be delighted to stay on as standby  
18 counsel. I would be delighted if Mr. Mahoney wants me  
19 to withdraw and the Court ordered that. Whatever the  
20 Court orders, I am happy with and clearly have no  
21 personal interest in the outcome of what my status is.

22 But if I am counsel of record, my  
23 understanding is that what my job would then be to do,  
24 and is presently because I am counsel of record, would  
25 be to develop the trial strategy certainly in



1 conjunction and consultation with Mr. Mahoney. But at  
2 the end of the day my -- if I am ordered to be counsel  
3 of record -- and I need to make this clear really in  
4 this setting because it sort of plays into whether  
5 that would work -- I would be ethically responsible --  
6 responsible from a Sixth Amendment point of view and  
7 responsible as an attorney to develop the trial  
8 strategy, to decide what witnesses to call, and Mr.  
9 Mahoney's legal responsibility would be to decide  
10 whether to plead guilty or not and whether to testify.

11 I would have a job to listen to him, but I  
12 can tell the Court I'm not calling 127 witnesses. I  
13 submitted a witness list that had something like six.  
14 Of those six probably four would be called and a  
15 couple might be called by the government.

16 THE COURT: Okay. Understood.

17 MR. MAHONEY: It's exculpatory. We've got to  
18 look at the word exculpatory. Nelson Lovins is coming  
19 in here, and he's my attorney. He doesn't have my  
20 witness list. He's coming in here. He's the one that  
21 I had the appointment with.

22 And he said I was arrested in Boston, which I  
23 was, but I was arrested on a train platform on the  
24 fourth day going back home to New Hampshire.

25 MR. SCHULMAN: Well, he actually was on the

1 witness list.

2 THE COURT: You were going to call counsel?

3 MR. SCHULMAN: I was going to call him, but  
4 since we don't have a release of information it's a  
5 little difficult to know precisely what he would  
6 testify to.

7 The offer of proof is that there was to be  
8 perhaps an appointment on November 3rd or November 4th  
9 and that would explain why Mr. Mahoney was in Boston  
10 at that time because that's what he was doing. He was  
11 seeing that attorney.

12 THE COURT: All right.

13 MR. SCHULMAN: However, it's a little bit  
14 difficult without the release to know what he's going  
15 to say.

16 But putting that aside. For instance, we've  
17 heard today a great deal about what Trooper Rockey put  
18 in that letter. No disrespect at all intended to Mr.  
19 Mahoney whether or not the letter is correct, but that  
20 would not --

21 THE COURT: Make any difference.

22 MR. SCHULMAN: That would not make any  
23 difference at trial. I would not focus on it.

24 THE COURT: I understand.

25 MR. SCHULMAN: Within the bounds of ethics,

1 and as counsel of record, the trial strategy I think  
2 needs to be up to counsel. That's why you have  
3 counsel.

4 MR. MAHONEY: If I may, Judge.

5 THE COURT: No, you may not.

6 Mr. Huftalen, is there anything you want to  
7 say before we wrap this up?

8 MR. HUFTALEN: No. Thank you.

9 THE COURT: Okay. All right then. We are on  
10 track to litigate the motion to dismiss, which is a  
11 very interesting issue, under SORNA. We will do that,  
12 and then if necessary proceed to a competency  
13 evaluation from there. I guess no one else has  
14 anything to say.

15 Mr. Garrity, I want to thank you for your  
16 service to the Court. I know it's been trying. Not  
17 every case -- it's not every case where you have your  
18 clients accusing you of misconduct and reporting you  
19 to the PCC, but I want you to know I appreciate the  
20 zeal with which you've represented Mr. Mahoney, the  
21 professionalism that you exhibited and the patience.

22 MR. GARRITY: No problem, Judge.

23 THE COURT: But your motion is granted.

24 MR. GARRITY: I appreciate it.

25 THE COURT: You are released from your

1 representation of Mr. Mahoney.

2 MR. GARRITY: Thank you.

3 THE COURT: We are in recess.

4 (Conclusion of hearing 3:50 p.m.)

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## C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 8-3-12      /s/ Susan M. Bateman  
SUSAN M. BATEMAN, LCR, RPR, CRR